

## **Remarks**

Claims 2 -4 and 17 – 42 have been canceled. Claim 5 – 6 and 15 have been amended. Claims 5 – 11, 13, 15 – 16 are pending.

Applicants address the Examiner's remarks in the order presented in the Office Action.

## **Priority**

Applicants thank the Examiner for bringing to Applicants' attention that a certified copy of the foreign application as required by 35 USC 119(b) has not been filed. Applicants are attending to this matter and will file the certified copy separately as soon as possible.

## **Sequence Rules**

The Examiner points out that the instant specification and Figure 7 present nucleic acid/amino acid sequences that are encompassed by the definitions for nucleotide and/or amino acid sequences set forth in 37 CFR 1.821(a)(1) and (a)(2) but fails to comply with the requirements. As noted by the Examiner, since the nucleic acid and encoded amino acid sequence of Figure 7 are already present in the sequence listing, Applicants have amended the brief description of the drawings as to Figure 7 so as to reference SEQ ID NO:1.

## **Claim Objections**

The Examiner has objected to claims 5 – 8 and 13 under 37 CFR 1.75(c) as being in improper form for failing to further limit the subject matter of a previous claim. Applicants have amended 5 to recite the subject matter from claim 41 that pertains to the elected subject

matter of the nucleic acid of the invention. Further, claim 6 has been amended to be in independent form. No new matter has been added. No new matter has been added as a consequence of these amendments.

Claim 16 has been objected to by the Examiner as allegedly an improper incorporation by reference by reciting ATCC numbers. The recitation of ATCC numbers is not an incorporation by reference but merely identifying terminology referencing a deposit of the biological material with ATCC. The abbreviation “ATCC” is recognized by the skilled person to refer to biological deposits made to ATCC. If the Examiner feels it would clarify the claim language, Applicants could amend the claim to recite “American Type Culture Collection”. Applicants seek further clarification from the Examiner with regard to the ATCC numbers.

### **Rejection under 35 USC §112 – First Paragraph**

The Examiner has rejected claims 5 – 8, 11 and 15 – 16 under 35 USC §112, first paragraph, as allegedly containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventor had possession of the claimed invention at the time the invention was filed. Claim 5 was amended as noted above and further amended to recite SEQ ID NO: 1. Claim 6 has been amended to be in independent form. Claims 7 – 8, 11, 15 and 16 are dependant from claims 5 and/or claims 6. Applicants respectfully request withdrawal of the rejection under 35 USC §112, first paragraph.

### **Rejection under 35 USC §112 - Second Paragraph**

The Examiner has rejected claims 5 – 11, 13 and 15 – 16 under 35 USC §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter applicant regards as the invention because there were no sequences

referenced. As explained above, claims were amended to recite SEQ ID NOs. Thus, Applicants believe this rejection has been rendered moot.

Applicants respectfully submit that the application is now in condition for allowance and request notice thereof. Should the Examiner believe that an interview would advance prosecution of the application, the Applicants invite the Examiner to contact the undersigned attorney at 908-231-4757.

Respectfully submitted,

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